

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE**

H.R. 4107, the Assistance to Firefighters Grant Reauthorization Act of 2004

Hearing Charter

**Wednesday, May 12, 2004
10:00 AM – 12:00 PM
2318 Rayburn House Office Building**

1. Purpose

On Wednesday, May 12th, 2004, the House Science Committee will hold a hearing to examine the Assistance to Firefighters Grant Program and to receive testimony on H.R. 4107, the *Assistance to Firefighters Grant Reauthorization Act of 2004*.

2. Witnesses

Panel I

The Honorable Bill Pascrell is the representative from the 8th District of New Jersey.

Panel II

Mr. R. David Paulison is Administrator of the United States Fire Administration (USFA) within the Department of Homeland Security (DHS) Emergency and Preparedness Response directorate. Before being appointed as Administrator in 2001, Mr. Paulison was Chief of the Miami-Dade Fire Rescue Department.

Mr. Andrew Mitchell is Deputy Director of the Office of Domestic Preparedness (ODP) within the DHS Border and Transportation Security Directorate. Prior to joining ODP, Mr. Mitchell served as the Chief of the National Initiatives Branch in the Bureau of Justice Assistance at the Department of Justice.

Mr. James M. Shannon is President and CEO of the National Fire Protection Association (NFPA). Mr. Shannon joined NFPA as senior vice president and general counsel in 1991. From 1987-1991, he served as Attorney General of the Commonwealth of Massachusetts. Prior to that, he served for six years as a member of the U.S. House of Representatives.

Chief Philip C. Stittleburg is Chairman of the National Volunteer Fire Council (NVFC). He served as the NVFC Foundation President for twelve years and is a current member of the NFPA Board of Directors. Chief Stittleburg has served as Chief of the LaFarge (WI) Fire Department

for 26 years. He is also legal counsel to the NVFC, the LaFarge Fire Department, and the Wisconsin State Firefighters Association.

Chief Ernest Mitchell is President of the International Association of Fire Chiefs. Chief Mitchell recently retired as Chief of the Pasadena Fire Department. He is also past president of the Foothill Chiefs, Los Angeles Area Fire Chiefs, and League of California Cities Fire Chiefs associations.

Mr. Kevin O'Connor is the Assistant to the General President of the International Association of Fire Fighters. Previously, Mr. O'Connor served concurrently as president of the Maryland State and District of Columbia Professional Fire Fighters and the Baltimore County Fire Fighters Association, Local 1311.

Panel III

The Honorable Steny Hoyer is the House Minority Whip and representative of the 5th District of Maryland.

3. Overarching Questions

The hearing will address the following overarching questions:

1. How do the administration and fire services organizations view H.R. 4107?
2. How effective has the Assistance to Firefighters Grant Program (AFGP, also known as the FIRE Act) been at improving the overall level of readiness of fire departments in the United States? What level of need still exists with regard to the ability of fire departments to respond to day-to-day hazards, and in what areas are the gaps the greatest?
3. How should the federal government balance support for basic first responder needs with support for counterterrorism preparedness?
4. What are the status and outlook for the Fiscal Year (FY) 2004 grant process? What major changes, if any, have taken place in the program since ODP assumed responsibility for administering it this year? To what extent are ODP and USFA coordinating to ensure continuity in program administration?

4. Brief Overview

- In 2000, Congress established the AFGP to award grants directly to local fire departments to protect “the health and safety of the public and firefighting personnel against fire and fire-related hazards, and to provide assistance for fire prevention programs.” (The current authorization expires at the end of FY 2004.)

- Since 2001, the AFGP has distributed \$1.1 billion to nearly 17,000 fire departments around the country. Currently, more than 20,000 departments have applied for the \$750 million available for the AFGP in FY 2004.
- From its inception until FY 2003, the AFGP was administered by USFA. For the first time this year, the program is being administered by ODP as a result of language included in the FY 2004 appropriation bill for the Department of Homeland Security. Many in the fire services and Congress have voiced concern that this transfer could shift the focus of the program toward state-administered counter-terrorism assistance and away from providing direct assistance on a competitive basis to fire departments for the purpose of improving basic firefighting capabilities.
- On April 1st 2004, Chairman Boehlert and a bi-partisan group of Congressional Fire Services Caucus leaders introduced H.R. 4107, the *Assistance to Firefighters Grant Reauthorization Act of 2004*. The bill would authorize \$900 million per year for the program in fiscal years 2005-2007. While H.R. 4107 continues the AFGP mostly unchanged, it does make several programmatic modifications, including:
 - Program Location. Transfers authority for administering the AFGP from ODP to USFA.
 - EMS Eligibility. Allows volunteer non-profit, non-hospital Emergency Medical Service (EMS) squads not affiliated with fire departments to apply for grants. The bill would set a cap on the amount of funds those entities could collectively receive at 4 percent of the total appropriation for the program.
 - Non-federal Match. Reduces from 30 percent to 20 percent the non-federal matching requirement to receive a grant for jurisdictions that serve more than 50,000 people.
 - Maximum Grant Size. Increases the grant-size cap from \$750,000 to \$3 million for jurisdictions that serve more than 1 million people, \$2 million for jurisdictions that serve between 1 million and 500,000 people, and \$1 million for all other departments.
 - Volunteer Non-Discrimination. Specifies that departments that receive funding under this Act cannot discriminate against, or prohibit employees from engaging in, volunteer firefighting activities in another jurisdiction during off-duty hours.
 - Peer Review. Codifies USFA's current practices of consulting with fire service organizations in considering criteria changes to the AFGP and appointing fire service personnel to conduct peer review of applications.

- In February, a coalition of fire service groups¹ submitted to Congress a position paper (or White Paper) on the reauthorization of the AFGP. Many of the provisions in H.R. 4107, such as increased maximum grant size and decreased non-federal match for larger departments, are similar to or the same as those in the White Paper. The most notable differences are:
 - Program Location. The White Paper requires the Director of DHS to decide which directorate within DHS should be responsible for administering the AFGP.
 - EMS Eligibility. The White Paper does not address this issue.
 - Volunteer Non-Discrimination. The White Paper does not address this issue.

5. Issues

Volunteer Non-Discrimination

H.R. 4107 includes a provision barring fire departments receiving grants under the act from prohibiting their members from volunteering in other jurisdictions during off-duty hours. These firefighters, known as “two-hatters,” are the center of an ongoing issue of contention between volunteer fire departments and the International Association of Fire Fighters, a career firefighters union. While the prevalence of two-hatters is widespread and has been for decades, pressure from IAFF locals either to (1) enter into collective bargaining agreements with their municipalities prohibiting firefighters from volunteering in their off-duty hours; or (2) take internal union actions against members that also serve as volunteer firefighters, is a more recent and regional practice.

Despite the infrequent occurrence of such activities, increased pressure to do away with two-hatters has potential to substantially reduce the readiness of volunteer departments across the country, where preparedness is often heavily dependent upon more experienced, full-time firefighters. In response to these concerns, H.R. 4107 states that “A fire department receiving funds provided under this section shall not discriminate against, or prohibit its members from engaging in, volunteer activities in another jurisdiction during off-duty hours.” The language would not impact IAFF internal policies² or the ability of a union local (as opposed to a fire department) to take internal action against two-hatter members.

The non-discrimination provision is similar to one that passed last year in the SAFER Firefighter Grant Program, which provides funding to municipalities to train and hire new firefighters. That

¹ Comprised of the Congressional Fire Services Institute, International Association of Arson Investigators, International Association of Fire Chiefs, International Association of Fire Fighters, International Code Council, International Fire Service Training Association, International Society of Fire Service Instructors, National Fire Protection Association, National Volunteer Fire Council, and North American Fire Training Detectors.

² Currently, Article 15 of the IAFF Constitution prohibits members from joining “rival organizations...including volunteer fire departments”.

bill, which came out of the Science Committee, prohibits a department from barring firefighters hired using SAFER funds from volunteering.

Location of the AFGP Program within DHS

The *Homeland Security Act of 2002* (P.L. 107-296) designated ODP as the principal Federal agency responsible for the preparedness of the United States for acts of terrorism. Since 2002, ODP has administered a number of grant programs that provide funds to states explicitly for distribution to first responders for terrorism preparedness. These programs include the State Homeland Security Grant Program, the Law Enforcement Terrorism Prevention Program, the Citizen Corps Program, and the Urban Area Security Initiative Grant Program.

In an effort to consolidate first responder grant programs, the AFGP was transferred to ODP in FY 2004. However, because ODP's mission is terrorism preparedness and because the agency does not have experience working with fire departments or local jurisdictions, many in the fire services community and Congress have voiced concern that this shift could be detrimental to the program. H.R. 4107 places authority for administering the AFGP at USFA.

Distribution of Grant Funds

When the fire grant program was created, there was some concern that large career departments would get a majority of the funding at the expense of smaller departments. To address this, the original legislation capped grants to individual departments at \$750,000. In addition, a 30 percent cost share for departments serving jurisdictions with a population of greater than 50,000 was implemented. In part because of the lower tax base in rural areas, jurisdictions serving less than 50,000 people were required to provide only a 10 percent cost share.

The unintended result of these policies appears to be that career departments, which serve approximately 40 percent of the population, are actually applying for and receiving a disproportionately lower amount of funding than volunteer and combination departments. For example, in FY 2003, only 13 percent of applications submitted, and 17 percent of grants awarded, were from career departments. This issue of equity was raised in an Office of Management and Budget Program Assessment Rating Tool (PART) review of the AFGP in the 2005 budget, which noted that the \$750,000 grant cap disadvantages larger departments.

In response to this disparity, H.R. 4107 includes changes to make it easier for larger departments to apply for more AFGP funding. The non-federal matching requirement for jurisdictions that serve more than 50,000 people is reduced from 30 percent to 20 percent. Also, the bill increases the grant-size cap from \$750,000 to \$3 million for jurisdictions that serve more than 1 million people, \$2 million for jurisdictions that serve between 1 million and 500,000 people, and \$1 million for all other departments.

Program Effectiveness

While the Assistance to Firefighters Grant Program has received nearly universal acclaim from fire departments and fire services organizations, reviews from various federal entities have been more mixed. A 2003 DHS Inspector General (IG) report stated that “program goals, priorities, and grant criteria (had been) prudently developed.” The report also found that the “application solicitation is adequate, grant process is competitive, and application review is equitable.” The report concluded that the “AFGP appears to be addressing the basic needs and capabilities of the fire service as a whole.” The report did make the following recommendations for ways that the AFGP could be strengthened:

- 1) require greater detail to determine a fire department’s financial need;
- 2) require applicants to declare other federal funding sources to avoid potential duplication of assistance;
- 3) promote mutual aid and regional approaches to enhance interoperability;
- 4) improve monitoring of grant recipients to ensure expectations and responsibilities are met;
- 5) developing performance measures to assess the program’s long-term effect;
- 6) Use needs assessment findings as an additional tool to define program priorities and eligibility criteria; and
- 7) Clarify the distinction between the Fire Prevention and Safety program and the Fire Prevention program category of the AFGP.

The overall conclusion of the OMB PART review of the AFGP in the FY 2005 budget request was more critical. One of the primary criticisms raised in the PART assessment was that there were no data to indicate that the AFGP had been effective at reducing losses of life and property from fires. Another is that there have not been enough independent evaluations of the program to evaluate program effectiveness and guide improvements.

7. Questions for Witnesses

Questions for Mr. Paulison:

- How effective has the Assistance to Firefighters Grant program been at improving the overall level of readiness of emergency responders in the United States? What needs still exist with regard to the ability of fire departments to respond to day-to-day hazards, and in what areas are the gaps the greatest? How should the federal government balance support for basic first responder needs with support for counterterrorism preparedness?
- Please describe the role that non-government participation has played in administering of the program. Should the role of outside groups and individual firefighters be modified and if so how?
- Please describe the results of the September 2003 USFA Inspector General’s report on the Assistance to Firefighters Grant Program. What is your reaction to the recommendations of the report and what actions has USFA taken to respond to those recommendations?

Questions for Mr. Mitchell:

- What is the status and outlook for the FY 2004 grant process? What major changes, if any, have taken place in the program since ODP assumed responsibility for administering it this year? To what extent has ODP coordinated with USFA to ensure continuity in program administration?
- What needs still exist with regard to the ability of fire departments to respond to day-to-day hazards, and in what areas are the gaps the greatest? How should the federal government balance support for basic first responder needs with support for counterterrorism preparedness programs?

Questions for Mr. Shannon

- How effective has the Assistance to Firefighters Grant Program been at improving the overall level of readiness of emergency responders in the United States? What did the NFPA study, *A Needs Assessment of the U.S. Fire Service*, reveal about the ability of fire departments to respond to day-to-day hazards? How should the federal government balance support for basic first responder needs with support for counterterrorism preparedness?
- According to a Program Assessment Rating Tool (PART) evaluation by the Office of Management and Budget, the fire grant program does not address a specific and existing problem, interest or need. What is your response to this conclusion? What measurable evidence is there that the program has improved public safety, and - to the extent more evidence is needed - what metrics should be used to evaluate the success of the program?
- Please provide comments and recommendations on H.R. 4107 and how it might be improved, including specific comments on the following important provisions that the Committee and Congress will be discussing.

Questions for Chief Mitchell, Mr. Schaitberger, and Mr. Stittleburg

- How effective has the Assistance to Firefighters Grant Program been at improving the overall level of readiness of emergency responders in the United States? What needs still exist with regard to the ability of fire departments to respond to day-to-day hazards, and in what areas are the gaps the greatest? How should the federal government balance support for basic first responder needs with support for counterterrorism preparedness?
- According to a Program Assessment Rating Tool (PART) evaluation by the Office of Management and Budget, the fire grant program does not address a specific and existing problem, interest or need. What is your response to this conclusion? What measurable evidence is there that the program has improved public safety, and - to the extent more evidence is needed - what metrics should be used to evaluate the success of the program?

- Please provide comments and recommendations on H.R. 4107 and how it might be improved, including specific comments on the following important provisions that the Committee and Congress will be discussing.

Section by Section Summary of H.R. 4107

Assistance to Firefighters Grant Reauthorization Act of 2004

Sec. 1. Short Title.

“Assistance to Firefighters Grant Reauthorization Act of 2004”

Sec. 2. Findings.

Contains 27 Findings describing fire department needs and other relevant fire statistics.

Sec. 3. Amendments.

Amends Section 33 of the Federal Fire Prevention Control act of 1974 (15 U.S.C. 2229), which authorizes the Assistance to Firefighters Grant Program (AFGP), making the following changes:

- (1) Strikes [FEMA] “Director” each place it appears and replaces with [USFA] “Administrator”.
- (2) Expands upon authority to make grants to fire departments to also include “volunteer emergency medical service squads”.
- (3) Expands authority to provide assistance for fire prevention programs under the program to include assistance for “firefighter safety research and development”
- (4) Expands upon eligible use of grant funds to include emergency medical services provided by volunteer EMS squads that are not affiliated with a fire department, hospital, or any for-profit entity.
- (5) Amends subsection on Fire prevention programs to-
 - (A) Expand the title to “Fire prevention and firefighter safety research and development”;
 - (B) Clarify that fire departments cannot apply for grants under this subsection.
 - (C) Expand priority consideration under this subsection to include organizations that focus on prevention of injuries “to high-risk groups from fire, as well as research programs that demonstrate the potential to improve firefighter safety”
- (6) Amends subsection on matching requirements to
 - reduce the non-federal match for departments serving jurisdictions of greater than 50,000 people from 30 percent to 20 percent; and
 - clarify the Fire prevention grants shall not have a matching requirement.
- (7) Amends subsection on grant size limitation to provide that –
 - (A) The total amount a grant recipient may receive is increased from \$750,000 to
 - \$1,000,000 for departments that serve a jurisdiction with 500,000 people or less;
 - \$2,000,000 for departments that serve a jurisdiction of 500,000 to 1,000,000 people; and
 - \$3,000,000 for departments that serve a jurisdiction with more than 1,000,000 people. The bill also provides that, upon showing sufficient need, a jurisdiction serving a number of people near the threshold may receive funding up to the next higher level.
 - (B) Re-designates subparagraph (B) as subparagraph (C)
 - (C) Provides that “no single recipient may receive more than one half of one percent of the funds appropriated under this section for a single fiscal year”; and

- (D) Requires that not more than 4 percent of the funds appropriated to provide grants may be collectively awarded to volunteer medical service squads.”
- (8) Codifies current grant program practice regarding annual criteria development and peer-review process. Also adds at the end the following new paragraph on discrimination of volunteer firefighters:
“(16) Protection of volunteers from discrimination- A fire department receiving funds provided under this section shall not discriminate against, or prohibit its members from engaging in, volunteer activities in another jurisdiction during off-duty hours.”
- (9) Authorizes annual appropriations of \$900 million for the program through fiscal year 2007.

Sec. 4. Reports.

- (a) Study on Need for Federal Assistance to State and Local Communities to Fund Firefighting and Emergency Response Activities- Directs the Administrator to--
 - (1) reconduct the study required under section 1701(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, in conjunction with the National Fire Protection Association, to--
 - (A) define the current role and activities associated with the fire services;
 - (B) analyze the extent to which grant awards fulfill the goals of applicants; and
 - (C) provide a needs assessment to identify shortfalls;
 - (2) express the needs assessment under subparagraph (A)(iii) on a national and State-by-State basis; and
 - (3) measure the impact the Assistance to Firefighters Grant program under section 33 of the Federal Fire Prevention and Control Act of 1974 has had in meeting the shortfalls identified in the original report conducted under such section 1701(b).
- (b) Time for Completion of Study; Report- Directs the Administrator to complete the study under subsection (a), and submit a report on the results of the study to Congress, not later than 18 months after the date of the enactment of this Act.
- (c) Authorization of Appropriations- Authorized to be appropriated to the United States Fire Administration \$300,000 for fiscal year 2005 to carry out the study required by subsection (a).